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RE PFX LEONARD

OCJ IPOH
WILLAN CJ
30 SEPTEMBER 1948

Advocates and Solicitors Ordinance, 1947, s 5(3) — Whether time spent by Petitioner as a Pupil of a Senior Counsel of Irish Bar is a period of pupillage within the meaning of s 5(3)(a)(i) of the Ordinance

In this application the question raised was whether the time spent by the Petitioner as a pupil of a Senior Counsel of the Irish Bar is a period of pupillage as required by s. 5(3)(a)(i) of the Advocates and Solicitors Ordinance.

Held: the words "practising barrister" in s. 5(3) (a)(i) of the Advocates and Solicitors Ordinance, 1947, applies only to a barrister of England or Northern Ireland and therefore the time spent by the Petitioner as a pupil of a Senior Counsel of the Irish Bar is not a period of pupillage as required by s. 5(3)(a)(i) of the Ordinance.

Case referred to
In Re KTK Tangamani (1948) MLJ 101 [1]

PETITION FOR ADMISSION

JHB Will for the Petitioner.
WGW Hastings for the Bar Council of the Federation.
MS Mahendran for the Perak Bar Committee.
MG Neal for the Attorney-General.

WILLAN CJ:

[2] The petitioner was called to the Bar of Ireland on the 25th of October, 1941, and practised at the Irish Bar for a period of six years.

[3] From the 10th of January, 1942, until the 31st July, 1942 — i.e. for a period of nearly seven months — the petitioner was a pupil of a Senior Counsel of the Irish Bar.

[4] From the 28th of January, 1948, to the 10th of August, 1948, the petitioner has attended and received instruction in law in the office of a

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practising practitioner of more than seven year's standing at the Bar of the Federation of Malaya (formerly the Bar of the Malayan Union and prior to that the Bar of the Federated Malay States), and he now (in September, 1948) applies to be admitted to the Bar of the Federation.

[5] The only question raised before me, and which I have to decide, is whether the time spent by the petitioner as a pupil of a Senior Counsel of the Irish Bar is a period of pupillage as required by section 5(3)(a)(i) of the Advocates and Solicitors Ordinance, 1947. That section reads:—

> 5 …
>
> (3) Before any order shall be made by the Court on his petition every petitioner shall have attended and received instruction in law in the office in the Malayan Union (now the Federation) of a practising practitioner of not less than seven years' standing at the Bar of the Federated Malay States, or one of the Straits Settlements, or of the State of Johore, or of the Malayan Union or any two or more of such Bars, for the period hereinafter mentioned, namely:
>
> (a) if the petitioner is a barrister of England or Northern Ireland (or of Ireland called before the first day of October, 1921) or a member of the Faculty of Advocates in Scotland and has previously been a pupil of or read in the Chambers of a practising barrister or member of the Faculty of Advocates of more than seven years' standing and has
>
> (i) been a pupil or read in Chambers as aforesaid for six months or longer — a period of not less than six months;

[6] If the time spent by the petitioner as a pupil of Senior Counsel of the Irish Bar is a period of pupillage within the meaning of section 5(3)(a)(i) his petition for admission is not premature, because he has attended and received instruction in law for a period of not less than six months in the office of a practising practitioner of not less than seven years' standing at the Bar of the Federation.

[7] Mr. Will, for the petitioner, relied on the case of *In Re KTK Tangamani* (1948) MLJ 101 as an authority for the proposition that the time spent by the petitioner as a pupil of a Senior Counsel of the Irish Bar is a period of pupillage within the meaning of section 5(3)(a)(i) of our local Ordinance.

[8] That case was decided by McElwaine C.J., under the Advocates and Solicitors Ordinance (Cap. 62) of the Straits Settlements. In construing the meaning of the words "been a pupil of or read in the Chambers of a practising barrister", which appear in section 5(3) of that Straits Settlements Ordinance,

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as they do in section 5(3)(a) of our local Ordinance, the learned Chief Justice said by way of obiter — it was not necessary to the decision in that case:— A

> The word 'pupil' was not inserted in the section to lend support to Mr. Cobbett's interpretation of the clause. That word was introduced to provide for the case of Irish Barristers as it was most unusual, and I think is still unusual, for Irish Barristers to have chambers. The Law Library took, and still takes, the place of chambers in Ireland. B

[9] Mr. Hastings for the Bar Council of the Federation, opposed the petition solely on the construction of section 5(3)(a)(i) of our local Ordinance. His argument was that the word 'barrister' where it appears secondly in paragraph (a) thereof, refers back to, and therefore has the same meaning as, the expression 'barrister of England or Northern Ireland' which appears at the beginning of the paragraph. C D

[10] Mr. Hastings submitted that this is clearly so because where the petitioner is a member of the Faculty of Advocates in Scotland, the words 'Faculty of Advocates', where they occur secondly in that paragraph, can have no other meaning than the expression 'Faculty of Advocates in Scotland' set out earlier in that paragraph. E

[11] Mr. Mahendran, for the Perak Bar Committee, did not oppose the petition. F

[12] Mr. Neal, for the Attorney-General, associated himself with the arguments of Mr. Hastings.

[13] I have no doubt that the view put forward by Mr. Hastings is correct. There must be some limitation on the word 'barrister' where it appears secondly in paragraph (a) of that section, and the only possible limitation is by construing the section in the way put forward by Mr. Hastings. G

[14] No evidence was placed before me as to the practice in Northern Ireland when a barrister, or a person admitted as a law student who is not yet called to the Bar, wishes to read with a practising barrister in Northern Ireland, and it may be that there the word 'pupil' is apposite. In England the words 'been a pupil of' and the words 'read in Chambers of' a practising barrister, mean one and the same thing. H I

[15] I am not prepared to follow the *obiter dictum* of McElwaine C.J. in the *Tangamani case supra* as the right construction of section 5(3)(a) of our local law.

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[16] In the result this petition is premature and accordingly there will be no order.

No order.